



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2009-0805; FRL-9933-66-Region 5]

**Wisconsin; Disapproval of Infrastructure SIP with respect to
Oxides of Nitrogen as a Precursor to Ozone Provisions for the
2006 PM_{2.5} NAAQS**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove an element of State Implementation Plan (SIP) submissions from Wisconsin regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2006 fine particulate matter (PM_{2.5}) National Ambient Air Quality Standard (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action pertains specifically to an infrastructure requirement for states to correctly address oxides of nitrogen (NO_x) as a precursor to ozone in their respective prevention of significant deterioration (PSD) programs.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** .

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2009-0805 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: aburano.douglas@epa.gov.
3. Fax: (312) 408-2279.
4. Mail: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID. EPA-R05-OAR-2009-0805. EPA's policy is that all comments received will be included in the public docket without change and may be made

available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra, Environmental Scientist, at (312) 886-9401, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-9401, arra.sarah@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What should I consider as I prepare my comments for EPA?
- II. What is the background of this SIP submission?
- III. What is EPA's review of this SIP submission?
- IV. What action is EPA taking?
- V. Statutory and Executive Order Reviews.

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date, and page number).
2. Follow directions - EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background of this SIP submission?

This rulemaking addresses a January 24, 2011, submission supplemented on June 29, 2012, from the Wisconsin Department of

Natural Resources (WDNR) intended to address all applicable infrastructure requirements for the 2006 PM_{2.5} NAAQS.

The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

This specific rulemaking is only taking action on a specific requirement of PSD, NO_x as a precursor to ozone, which is a component under the infrastructure elements described in CAA sections 110(a)(2)(C), (D)(i)(II), and (J). The majority of the other infrastructure elements were approved in an October 29, 2012 (77 FR 65478) rulemaking.

III. What is EPA's review of this SIP submission?

On September 13, 2013, EPA issued "Guidance on Infrastructure State Implementation Plan (SIP) Elements under

Clean Air Act Sections 110(a)(1) and 110(a)(2)” (2013 Memo). As noted in the 2013 Memo, pursuant to CAA section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. WDNR provided public comment opportunities on both its January 24, 2011 and October 29, 2012 submittals. EPA is also soliciting comments on the specific requirement we are evaluating in this proposed rulemaking. WDNR provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements in section 110(a)(2) for the 2006 PM_{2.5} NAAQS, as applicable. The following review only evaluates the state’s submissions for PSD provisions that explicitly identify NO_x as a precursor to ozone in the PSD program.

EPA’s “Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard – Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline” (Phase 2 Rule) was published on November 29, 2005 (see 70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify NO_x as a precursor to ozone (70 FR 71612 at 71679, 71699-71700). This requirement was codified in 40 CFR 51.166.

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including those identifying NO_x as a precursor to ozone, by June 15, 2007 (see 70 FR 71612 at 71683, November 29, 2005).

During the comment period following the proposed approval for the infrastructure requirements of the 1997 ozone and PM_{2.5} NAAQS (76 FR 23757), two commenters observed that although EPA proposed to approve Wisconsin's infrastructure SIP as meeting the correct requirements for NO_x as a precursor to ozone in the State's PSD program, Wisconsin's PSD SIP does not contain the most recent PSD program revisions required by EPA for this purpose. A subsequent review of Wisconsin's PSD SIP indicated that the commenters were correct in their assertion. Specifically, Wisconsin had not made necessary revisions to its PSD program with respect to the identification of NO_x as a precursor to ozone, consistent with the explicit requirements of the Phase 2 Rule. This led EPA to disapprove Wisconsin's infrastructure SIP in June 2012 for this narrow portion of section 110(a)(2)(C) with respect to the 1997 ozone and PM_{2.5} (77 FR 35870).

This final disapproval triggered the requirement under section 110(c) that EPA promulgate a Federal Implementation Plan (FIP) no later than two years from the effective date of the disapproval unless the State corrects the deficiency, and the

Administrator approves the plan revision before the Administrator promulgates such FIP. Wisconsin has taken multiple steps to address NO_x as a precursor to ozone in its PSD rules, starting in June 2012 with a note in rule. The state followed up with rule changes, effective August 2014, and SIP approved on October 6, 2014. (79 FR 60064) Prior to the effective date of the August 2014 rules, four additional areas requiring updated language were identified by EPA. Wisconsin was too far in the rule process to add additional changes at that point. Wisconsin immediately started a new rule package to address these additional areas, but these changes will not be effective until approximately August 2016 due to the length of the administrative rule process in Wisconsin.

In our initial rulemaking on Wisconsin's 2006 PM_{2.5} infrastructure SIP, we did not take action on this provision because of our previous disapproval. However, a proposed consent decree¹ between the Sierra Club and EPA requires EPA to take action on this portion of Wisconsin's submittal by November 30, 2015. Today's disapproval does not trigger a new FIP clock because the missing provisions are the same as those disapproved in the 1997 ozone and PM_{2.5} action. The evaluation of a state's PSD program is a requirement under the elements described in

¹ Case 3:12-cv-06472-CRB, filed on January 21, 2015.

section 110 (a) (2) (C) and (J), and the most common way to comply with section 110(a) (2) (D) (i) (II). Therefore, EPA is proposing to narrowly disapprove the PSD provision of NO_x as a precursor to ozone in the PSD portion of these three elements.

IV. What action is EPA taking?

EPA is proposing to narrowly disapprove portions of a submission from Wisconsin certifying that its current SIP is sufficient to meet required infrastructure elements.

Specifically, EPA is proposing to disapprove the NO_x as a precursor to ozone provisions for the PSD portions of infrastructure elements under CAA sections 110(a) (2) (C), (D) (i) (II), and (J) for the 2006 PM_{2.5} NAAQS.

V. Statutory and Executive Order Reviews.

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This rulemaking does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This action merely proposes to disapprove state law as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rulemaking proposes to disapprove pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to disapprove a state rule, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and would not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it proposes to disapprove a state rule.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Particulate matter, Reporting and recordkeeping requirements.

Dated: August 28, 2015.

Susan Hedman,
Regional Administrator, Region 5.

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